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Federal Communications Commission

DA 97-2273

DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Olney and Archer City, Texas)

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MM Docket No. 97-225  
RM-9173

### NOTICE OF PROPOSED RULE MAKING

Adopted: October 22, 1997

Released: October 31, 1997

Comment Date: December 22, 1997

Reply Comment Date: January 6, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Texas Grace Communications ("petitioner"), permittee of Station KRZB(FM), Channel 248C2, Olney, Texas, proposing the reallocation of Channel 248C2 from Olney to Archer City, Texas, and the modification of Station KRZB(FM)'s construction permit to specify Archer City as its community of license. In addition, petitioner proposes the allotment of Channel 270C2 at Olney, Texas. Petitioner states that it will apply for Channel 248C2 at Archer City and Channel 270C2 at Olney, if allotted.

2. Petitioner seeks modification of Station KRZB(FM)'s construction permit pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. In support of its proposal, petitioner states that Archer City is the county seat of Archer County and is a growing community with a population of 1,748 persons. Petitioner notes that Archer City is served by a Mayor, City Council, post office with its own unique zip code, independent school system, as well as a police department. Petitioner states that Archer City maintains a volunteer fire department, and provides its citizens with numerous other services including a municipal water and sewer department, and public library. Furthermore, petitioner contends that the reallocation of Channel 248C2 to Archer City will not result in

Olney's loss of its only transmission service since petitioner proposes a replacement channel to Olney. Petitioner states that adoption of its proposal would permit two communities, Archer City and Olney, to receive or retain their first local service, thus serving priority (3) of the Commission's change of community procedures.<sup>1</sup> Priority 4 is also triggered by virtue of the fact that Channel 248C2 at Archer City could provide service to an additional 110,599 persons. Moreover, petitioner contends that there is no risk that the reallocation of Channel 248C2 to Archer City would result in the creation, or perpetuation, of an unserved or undeserved area. Finally, petitioner notes that Archer City is not located within an Urbanized Area and advises that the proposed allotment at its nearest point from the Wichita Fall Urbanize Area will not place a 70 dBu signal over 50% for more of any Urbanized Area.

3. We believe petitioner's proposal warrants consideration since the reallocation of Channel 248C2 from Olney (population 3,519 persons)<sup>2</sup> to Archer City (population 1,748 persons) and the allotment of Channel 270C2 could provide both communities with their first local FM service. An engineering analysis has determined that Channel 248C2 and Channel 270C2 can be allotted to Archer City and Olney, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 248C2 can be allotted to Archer City with a site restriction of 0.2 kilometer (0.1 mile) southeast of the community.<sup>3</sup> Channel 270C2 can be allotted to Olney with a site restriction of 5.2 kilometers (3.2 miles) west of the city.<sup>4</sup> We shall not accept competing expressions of interest in the use of Channel 248C2 at Archer City or require petitioner to demonstrate the availability of an additional equivalent class channel at Archer City.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Olney, Texas	248C2	270C2

<sup>1</sup> See Community of License MO&O, *supra*, and Revision of FM Assignment Policies and Procedures. The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

<sup>2</sup> All population figures are derived from the 1990 U.S. Census.

<sup>3</sup> The coordinates for Channel 248C2 at Archer City are 33-35-36 NL and 98-37-31 WL.

<sup>4</sup> The coordinates for Channel 270C2 at Olney are 33-21-39 NL and 98-48-42 WL.

Archer City, Texas

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248C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before December 22, 1997, and reply comments on or before January 6, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John M. Pelkey, Esq.  
Haley, Bader & Potts P.L.C.  
4350 North Fairfax Drive  
Arlington, Virginia 22203-1633  
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.